

# MARTHA'S VINEYARD COMMISSION

BOX 1447 • OAK BLUFFS  
MASSACHUSETTS 02557  
(508) 693-3453  
FAX (508) 693-7894

MINUTES OF AUGUST 2, 1990

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a Special Meeting Thursday, August 2, 1990 at 8:00 p.m. at the Martha's Vineyard Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA.

Mr. Filley, Chairman, opened the special meeting at 8:05 p.m. and proceeded with agenda items.

ITEM #1 - Chairman's Report - There was none.

ITEM #2 - Old Business

Mr. Filley asked Mr. Morgan, Chairman of Land Use Planning Committee (LUPC), and Ms. White, Acting Executive Director on the MVY Realty Trust pending DRI, to report on the recent actions on this property.

Mr. Morgan stated we discussed it at the last LUPC meeting and it appears that dirt has been placed along the side of the road having come from the main bank in the rear. Ms. White gave us this presentation at Monday's LUPC meeting. LUPC voted to bring this to the full Commission tonight. He asked Ms. White to describe the site.

Ms. White showed a video of the site depicting the cliff where the dirt was removed, the piles placed along the access road, the sign erected and the chain placed along the State Road access. She stated that Mr. Saxe had done a site visit and estimates that the dirt piles are approximately 220 ft. long, 10 ft. wide and range from 6-10 ft. high. The hill where the dirt was removed was cut to a vertical of approximately 7-25 ft. in height. She stated that this property is the subject of 3 previous DRIs, 2 litigation cases and a pending DRI application. In DRI Decision #292 (subdivision) it clearly states in Condition 6.a. and 6.b. that they can make no alterations to the physical appearance of the land including excavation. Mr. Saxe estimates that the amount of excavation alone could have been a DRI. We have had complaints from several abutters about the site. The letter from Mr. McConnell, abutter, complaining about this work was passed around for the Commissioners' review. It was also stated that a letter from Judith Miller appeared in today's M.V. Times. Ms. White stated she has talked to Ken Barwick, Tisbury Building Inspector, and the applicant and basically they went ahead and did this because they had a lot of people dumping on their property and they were asked to block off the site so there would be no future dumping. They choose to do it with huge piles of dirt instead of maybe putting in a fence or other alternatives that could have been used. The question before the

Commission is what if anything would you like to do about this? Ms. White then answered questions from the Commissioners.

Mr. Young, Commissioner, asked what representative from MVY Realty Trust authorized this? Ms. White responded that from what she understands it was Michael Putziger but I spoke only to Brian Cook. Mr. Cook had conversations with the Board of Health and the Building Inspector for the past few months. Mr. Young asked prior to this? Ms. White responded yes. Mr. Young so they were fully aware that this was going to happen? Ms. White responded as I understand it yes. Mr. Young asked if Mr. Cook was the attorney that had represented MVY on previous DRIs? Ms. White responded yes. He told me that they had looked into it and didn't see any reason why it had to come to the Commission. Although it is clearly stated in Decision #292.

Mr. Schweikert, Commissioner, asked did somebody in the Town of Tisbury authorize this? Ms. White responded from what I understand the Building Inspector did. Mr. Schweikert asked who asked them to block the site off? Ms. White stated I believe the Board of Health initially asked them to clear the site and to try and prevent it from happening again. Ms. Colebrook, Commissioner and Tisbury Board of Health agent, stated negative. Ms. White asked you didn't request they clear the site? Ms. Colebrook stated yes I asked them to clean the site but I didn't tell them to put that up. Mr. Schweikert asked so no one asked for the dirt blocks? Ms. White stated not to my knowledge but I am only getting third hand information.

Mr. Lee, Commissioner, asked if Ms. White has spoken to the Building Inspector? Ms. White responded yes. Mr. Lee asked if he is present tonight? Ms. White responded I talked to him yesterday and told him we would be discussing this tonight under Item #2 but I don't see him in the audience.

Mr. Young stated assuming there are no further questions for Ms. White, I would suggest we have them put everything back and stabilize it.

Ms. Colebrook asked what impact that would have on the environment? Would that be more damaging? Ms. White stated from what she understands from Mr. Saxe the way that the site drains it is not so much a problem of it blocking the access road as it is running down the road and basically draining into Tashmoo Pond. That is where it is going to drain down to.

Ms. Sibley, Commissioner, stated that she is also quite concerned with the cliff itself that has been excavated. I stopped there briefly on my way tonight, I didn't go in but I looked at it. It would appear that where they took the sand out there is a very vertical face which looks very unstable. Ms. Green, Commissioner, brought it up at LUPC and I had the very same reaction. Maybe you have to be a mother to worry about this type of thing but we have all heard stories about kids going to play in sand cliffs that collapse. I think it is quite clear that this cliff could collapse. It is massive enough to pose a danger. Whatever else we decide to do, moving the dirt on the road or not, something has to be done about the massive safety hazard there.

Mr. Lee stated that the letter from Ms. Miller in the Times today expressed the similar concerns. These people have come in front of us before. It is very irresponsible of them to do this, terribly so. If they had come to us and said some people are dumping trash and we want to build a fence, will you give us a waiver of the DRI process and let us erect a fence, I think we would have probably gone for it. If there is a way for us to fine them or have them move those piles back where they were immediately we should. They can't reck the site more than it is now. Moving the dirt back I think is the first step.

Ms. Eber stated that there was mention of a fence. I think we should require a fence for safety reasons.

Ms. Green stated I would like to see a fence around the cliff because it appears somebody could walk off the edge at night without knowing.

Mr. Filley asked Mr. Morgan if LUPC had any recommendation? Mr. Morgan stated no we didn't. We just thought that it was certainly something the whole Commission should look at and relate it to the decision.

Ms. White stated that MVY is coming to LUPC on August 6th to get approval of their revised scope of traffic study. That might be a good time to discuss this further and give them a recommendation.

Mr. Lee stated that I think it would behove them to act on this immediately. It would certainly make me feel a little bit better about this.

Ms. Colebrook asked did the Building Inspector say anything? Did he authorize this? Ms. White responded that it is my understanding that he did authorize it. Ms. Colebrook asked if he gave them a permit? Ms. White responded I don't believe he gave them a permit but stated that it was a good idea to block off the site to eliminate further dumping. Which is does. However the method by which they blocked it off is what is questionable. Ms. Colebrook stated I don't think he was aware of this. He didn't give them a permit or authorization to do this? Ms. White stated I don't know specifically. He gave them authorization to block it off. I am unsure of whether he authorized this particular method.

Mr. Filley asked so you are in contact with both the Building Inspector and MVY? Ms. White responded I have been in contact with the Building Inspector and Mr. Cook from MVY. I have not spoken to Mr. Putziger directly. Mr. Filley asked if it would be the desire of the Commission to have Ms. White get back in touch with both of them and especially to have them address it immediately and also to make them aware that they will be asked to further address it on August 6th?

Mr. Young suggested that we have the Executive Director draft a letter to be sent tomorrow to the Building Inspector, Brian Cook and Mr. Putziger stating that they replace the dirt and stabilize the cliff immediately. If they want to block off the property some other way they can come back to the Commission to make that request. But what

they have done gets replaced immediately.

Mr. Lee suggested this be sent to the Board of Selectmen also.

Mr. Jason asked if any of the dirt/sand come from off site? Ms. White stated it is her understanding that it all came from the hill on the property. White Brothers came in they took it from the hill and placed it along the access road. There was no additional material brought onto the site.

Ms. Green stated that they should put a fence on the whole cliff area. If they want to fence off the whole area they come back to the full Commission. It was stated that returning the dirt alone might not stabilize the cliff unless it is hardpacked.

It was motioned and seconded to send a letter to the Tisbury Building Inspector, Mr. Putziger, Mr. Cook and the Tisbury Board of Selectmen stating that they restore the dirt/sand back to its original position, stabilize the cliff and place a fence around said cliff for public safety reasons.

Mr. Jason asked if Ms. White looked at the area before this was done? Ms. White responded the hill/cliff was probably not much safer than it is now. Mr. Jason asked if the video of the site before is available? Ms. White stated it could be located. Mr. Jason stated I have no objections to a fence on the top of the cliff.

Mr. Filley asked even if a letter goes out tomorrow it can still be addressed at Monday's LUPC. Mr. Young asked that copies of the letter be available at Monday's meeting.

Mr. Schilling, Acting Executive Director, stated we can fax the letter tomorrow with the original going out by mail.

Mr. Young asked if a staff member could go out and make sure it is stable? Ms. White stated that Mr. Saxe is familiar with the site. Mr. Young requested that Mr. Saxe do a site visit after they are done to check the stability.

When there was no further discussion on the motion, Mr. Filley called for a vote. The motion passed unanimously.

### ITEM #3 - Minutes of July 12 and July 19, 1990

It was motioned and seconded to approve the draft minutes of July 12, 1990. This motion passed with no opposition, 1 abstention, Sibley.

It was motioned and seconded to approve the draft minutes of July 19, 1990 with 2 corrections: Page 17 change Mr. Green to Ms. Green, Page 21, 2nd Paragraph, Mr. Lee's testimony, 2nd sentence, add the word "maybe" to we should deny it. This motion passed with no opposition, Fischer abstained.

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Chairman of LUPC, reported that they had met Monday and discussed a recommendation for the M.V. Hospital Long Term Care Facility. We will give that recommendation when it comes up on the agenda for discussion and possible vote. We also voted unanimously to deny the request for a waiver of the filing fee. We will be meeting with MVY Realty Trust on August 6th to discuss the revised scope of traffic study and we will also discuss the issues raised under Item #2. We will also be discussing Ferry Boat Village in Tisbury and continuing the working session on the DRI checklist. We will probably have 2-3 more meetings before we finish and come up with suggestions for a revised checklist.

Mr. Morgan then reported as Legislative Liaison by stating that Representative Turkington and others feel that the \$100,000 for the Commission is still very secure. It got moved back and forth in the Environmental Management budget but it ended up with the same language as it started out with. It is under retained revenue. We don't believe the Governor will veto it.

Mr. Morgan stated I have a letter from John Aylmer who wrote it to me as Legislative Liaison discussing the Mass. Maritime Academy as a possible site for the Marine Transit Symposium. Mr. Filley stated we have also received this letter and it will be read under correspondence.

Ms. Bryant, Commissioner, stated I believe their facilities aren't handicap accessible. We should check into that before we consider that for the site of our meeting.

Mr. Morgan stated that I thought we had decided it is our thing and that it should be held here. This was agreed.

Mr. Young, Chairman of the Search Committee, reported that they had finished the first round of interviews Saturday and voted immediately on the finalists. We have 2 finalists and the interviews for them before the full Commission is going to be August 23rd. The way we will do it is before the Commission meeting we will allow maybe an hour and a half for the interviews then recess for dinner then come back at 8:00 p.m. do our regular Commission business which will be kept to a minimum and then go ahead and have discussion and vote on a new Executive Director. There will be full coverage of the 2 candidates in the newspapers on the 16th and 17th in both papers. Prior to that all Commissioners will be given information on both candidates.

ITEM #5 - Discussion - Ship's Inn, Town of Oak Bluffs

Mr. Filley stated that both of the issues under Item #5 are informational for the Commissioners tonight. I would like to have people ask questions to gain information on both the issues here. We will be having follow-up discussion at a later date.

Mr. Filley asked Mr. Mavro, Oak Bluffs Building Inspector, to give a brief presentation on the issue of the Ship's Inn.

Mr. Mavro stated that the question is whether or not it is a DRI. Whether or not it is over 1,000 sq. ft. I have given Mr. Morgan all the plans and dimensions. I'll answer any questions you may have.

Mr. Morgan asked Mr. Mavro to walk us through this since the whole Commission wasn't at LUPC to hear the last presentation. He stated that all Commissioners have a copy of the packet given to us by Ms. Haigazian.

Mr. Mavro stated that the addition that was started in 1986 was stopped for the DRI question, later remeasured and the building inspector at that time found that it was not a DRI it was only 1,000 sq. ft. Mr. Filley asked if that was the total building? Mr. Mavro responded that he based it on the usable part, the restaurant section. They had a garage there and they put an addition on the front of that which is the dining area shown on the plan as being 16 X 34 ft. The second story above that goes over the existing structure. Mr. Young asked does it go over the garage? Mr. Mavro responded yes. Mr. Filley asked what page he is on? Mr. Mavro responded Page B-7. This shows the whole 2nd floor, the garage and the 3rd floor. The garage was converted into a kitchen. It is 2 1/2 stories. The whole 2nd floor was plywooded in as a whole floor. Parts of the attic space is plywooded and could be used as storage space. He referred to E-1 which shows the calculations and reviewed the calculations. I feel that it is a DRI. It is over 1,000 sq. ft. whether or not they have taken up some plywood which could be put back down at anytime. I feel it is a DRI and is over 1,000 sq. ft.

Mr. Filley asked if he has done a physical inspection of the space? Can you give us a report on that? Is there usage that is denoted as commercial? Mr. Mavro responded no. The restaurant is set up, the kitchen is in place, the 2nd floor would be storage as it is now. There is access to the 2nd floor.

Mr. Young asked what is the access to the 2nd floor? Is there a staircase? Mr. Mavro stated I will try to explain this to you. Next door is the Inn itself which is separated by about a foot. There are fire escape stairs. You walk up the stairs of the fire escape and go to the end you can walk across the roof into the 2nd floor door. Mr. Young asked so there is a 2nd floor and there is also a 3rd floor attic space? Mr. Mavro responded yes. Mr. Young asked do you have any idea why the applicant built the 2nd and 3rd floor if he had not intention of using it? Mr. Mavro responded that is my question also.

Mr. Sullivan asked it is a flat roof that you access the building by isn't it? Mr. Mavro responded yes.

Mr. Morgan asked if everyone understand because it wasn't clear to me the access in relation to the door? Ms. Haigazian asked to responded to this. Mr. Filley stated she would be given the opportunity to respond following Mr. Mavro. Mr. Mavro responded to the question by

stating that if you are on Kennebuk Avenue facing this structure and the Inn the overhead door would be on the left hand side. To the left is the Ship's Inn. In between the two buildings there is an egress/stairway on the side of the Inn with a flat roofed shed in between toward the addition. If you walked up those stairs and across the roof there is a door to the addition there.

Mr. Jason asked how would this be considered a DRI? Is he asking to use the 2nd floor? Mr. Mavro stated he is using the addition as a restaurant. Mr. Jason asked what is he going to do with the 2nd floor? Mr. Mavro responded I have no idea.

Ms. Sibley asked what is the role of the conversion of the garage? That is on the first floor, is being converted to be part of this and it was a garage? Mr. Mavro responded it is now the kitchen. It was a garage previously. Ms. Sibley asked what do you get with the 1st floor square footage with the garage and the restaurant? Mr. Mavro responded 544 + 460, 1004 sq. ft. Ms. Sibley stated so the 1st floor is over 1,000 sq. ft. That is what he is proposing to use, it is new or proposing a change of use. Ms. Sibley asked are you arguing that this is a DRI based on the 1st floor or on the 2nd floor and the attic. Mr. Mavro responded the whole thing. I contend the whole thing is a DRI.

Mr. Filley asked what is the status at this point? I know you have given an application to the Chairman of LUPC. Does the Town have any other action at this point? Mr. Mavro responded not at this point. Mr. Wey, Commissioner and Oak Bluffs Selectmen, stated that I believe the Town is in court. Mr. Mavro responded we were. The judge made a decision in the Town's favor based on the fact that it had to come to the Commission.

Mr. Filley asked if he had a copy of that decision? Mr. Mavro stated I don't think it exactly says that but I do have a copy. Mr. Filley asked for copies to be made and distributed to the Commissioners. This was done. Mr. Filley asked for any other questions for Mr. Mavro? Ms. Green asked for some background on the court decision. Mr. Mavro stated that Mr. Debettencourt through his attorney tried to get an injunction against the Town.

Mr. Sullivan asked why wouldn't it be a DRI? Mr. Filley responded I'm sure the applicant's attorney will address this.

Mr. Wey stated that from the Town's perspective this has been going on for many years. It has gone back and forth and finally came to a head by going to court in Fall River. The judge made a decision to come to the MVC to see if it is a DRI or not. Something like this should be cleared up so everybody can go forward.

When there were no further questions for Mr. Mavro, Mr. Filley asked Ms. Haigazian, attorney for the applicant, to address the Commission.

Rosemarie Haigazian, counsel for the Ship's Inn, stated that we are here unofficially. I am not sure why we are a DRI but I am quite happy to address the concerns and give a little more background. I have represented the DeBettencourts on this for a little more than a year. They got their permit to build in 1986. If you look at the packet that I prepared under critical dates they made an applicant for a building permit and a zoning permit to add on to the existing garage which already at that time was used as a kitchen, in a different configuration, but had been used as a kitchen since 1981. They made their application on July 20, 1986. When they submitted their application they submitted the plans that are included in the packets, D4-D7, first floor storage and second floor. When the building inspector reviewed it he suggested that the applicant itself only reflected the use of the ground floor and if they were going to put in a 2nd floor they should have a proper addressing of that. So on August the 6th they put in a 2nd application for the 2nd floor which they put dry good store for the use, copy attached as D3. There are no stairs or access to the 2nd floor. The 2nd floor is pure, unadulterated storage. The applicant then started to build. The reason that he built a 2nd floor then was in hopes of future expansion. It was cheaper to build it then than it is to put in a roof and build the 2nd floor later. So he built with the idea that someday in the future maybe he could use it, maybe he would use it, might as well build it while he had the opportunity. So he built the 2nd floor. Again there are no stairways, no way to get to it at all. The flooring on it was just plywood screwed down on top of the joists. He started to build a 3rd floor over the garage end of it. The building inspector stopped him and said no, no, no with a third floor it would become a DRI because I would have to count the 2nd floor you would have to have access. They discussed it and the 3rd floor was not built and the peak of the roof was built. The distances, the first floor to the ceiling joist is roughly 10 ft., then you have the storage area. The storage area is 9 ft. from the top of the joists to the bottom of the collar ties. From the exact center of the building the top of the collar ties, to the top of the building it is exactly 8 ft. The pitch is such that it goes down to an exact triangle in the attic space, if you will. Those are the measurements. At the time of the issuing of these permits, if you look at the top of the front page of your handouts, the DRI requirement were for any proposed retail or wholesale business, office and/or industrial development, as well as any private, educational or recreational facilities which have a floor area as follows and including additional or auxiliary building greater than 1,000 sq. ft. The building inspector believed that the ground floor additional space was counted, since there was no access to the 2nd floor the 2nd floor was not counted. The 2nd floor basically has a cathedral ceiling, there is no ceiling on it except the peak of the roof so the attic space that Mr. Mavro counted is truly non-existent. In January of 1989 that DRI requirement was amended, that is A3 in your packet, to specifically include the word storage. That was 2 1/2 years after this permit was issued and the building is built. The word storage was added. The Debettencourts, for their own personal reasons, had not needed or wanted to use that addition at that time. In August of 1989 they went to the building inspector and said our building is there, we need an occupancy permit, everything else is signed off on we need an occupancy permit. The building inspector



issued an occupancy permit, labelled B9 in your packet, labelled for storage only. My understanding is for a DRI the application shouldn't have been issued before it was a DRI. But in light of the fact that there had been a change in the rules and a change in the building inspector, perhaps he could have questioned it but he issued a permit, albeit for storage only. The word storage at that point was in the DRI regulations but this application and the building was built before the word storage was put in there. There have been a number of problems with these people opening. They have been before the Board of Health, many hearings and ultimately the Board issued all the necessary permits. There were not problems but a number of questions that have been answered to the Board of Health's satisfaction. There was a question raised by the Board of Selectmen relative to proper licensing, those have all been resolved. I was told by Mr. Coogan, Town Counsel, who I wish was here tonight that the last remaining question had only to do with the number of required parking spaces. Mr. Coogan sent us to the Zoning Board of Appeals (ZBA). There were a number of meetings with the ZBA and we ultimately ended up in a stalemate. As a direct result of that stalemate there was a law suit filed and a motion brought before the court, which happened to be sitting in Fall River. We went in based on parking. At that hearing Mr. Coogan raised the issue of a DRI and the Martha's Vineyard Commission. The court, and I believe there is a copy of the Decision before you and I can't quote it verbatim, but what the court basically said was at this time the Court is not willing to grant the applicant's motion. You can construe it anyway you want. I prefer to construe that I stood there with egg on my face and said as far as the MVC is concerned we are not here to address that issue. My understanding by him including that language is that I am free to come back. If you choose to construe it differently fine. That was my understanding. The judge didn't send us to the MVC. It doesn't say go to the MVC. It just says this is not the right time. To be on the safe side and in light of the fact that we were into the 4th of July weekend, we are now into August, we would like to open and the building inspector refuses to allow us to open a restaurant and to be safe, and since they are not using that 2nd floor because truly to get to the 2nd floor you have to go down an alley between the 2 buildings, you have to go up a stairway that was specifically built as an emergency egress fire escape in case of emergency of the Inn, the only other way to get to the stairway is through the Inn from a door marked for emergency only, you have to climb over a railing, walk across a gravel roof, go across the 1 ft. between the two buildings, carrying a step ladder or something unless you are willing to jump about 5 ft. up to the threshold of the door, that is how you get into the building. I didn't jump up, Mr. Mavro did. We applied to the building inspector July the 23rd of 1990. We asked whether or not we needed a building permit to remove 550 ft. of the flooring, the actual plywood on the 2nd floor. We were granted a permit on July the 23rd. On July the 24th the plywood was removed and on July 25th Mr. Mavro issued an occupancy permit, see C2 in your packet, again he marked it for storage only. All we want to do is operate a restaurant. In my way of thinking, and I am trying to be broad minded and cover all bases as I can, under your regs storage is included in restaurant, if it is good enough for storage it is good enough for retail, wholesale, restaurant and whatever commercial use there is in your regs. The

building inspector issued a permit as recently as a week ago. We asked why he put for storage only, there was a written inquiry, D1 in your packets, as to why he didn't issue the restaurant permit. His reply which was dated the same date as his letter to the Commission, July 30th, which says I am waiting to hear from the Commission as to whether or not this is a DRI. Most respectfully, if it was a DRI when it was built in 1986 then the word storage should have been included in the regulations at that time, if you are going to say storage was a part. Because the word storage was not considered in the regulations and the use was considered. The building was built then, the permit was sought and secured in August of 1986. The regs were not changed until January of 1989, two and one half years later. If you want to count actual square feet measurements then the floor is not there and there is a glorious ceiling. We do intend to put a drop ceiling on the first floor but the rest of the space you can't walk on. If you can't walk on it it can't be used. Certainly if we intend to use it we recognize that we would have to come back to the Commission. When they are ready to do it we will, because then we will know what we are going to do with it. As far as if you are going to add just the ground floor, somebody asked is your question just those 4 ft. or is your question the 2nd floor, if the question is just the 4 ft. then I would have to question Mr. Mavro's measurements. Because to me floor area, which is what the regs called for, would be measured from the interior of the wall. The building is 2 x 6 construction. 4 sq. ft. by his measurements. I guarantee you that if you measure interior wall to interior wall, instead of exterior wall to exterior wall, you would loose those 4 ft. and probably a number of feet more. I haven't measured it out but I could get those calculations for you. Anyway you look at it, it is going to be under. One other thing is that these people have had the application since August 12th, 1986. They built the building and for better than a year they have been trying to open. The fact of the matter is in my reading of the regs it requires that the building inspector properly refer this as a DRI. In order to refer this as a DRI a checklist must be submitted to the MVC by certified mail and that the timeframe doesn't start to tick until the certified mail is received by the Commission. Then it is a matter of whether or not the application is complete. When I was here looking at the file and asking was there a checklist it had not been sent by certified mail so the time still hadn't started ticking. As I understand it the application remains incomplete and that formally there is no referral before you. So to answer the gentleman's question of why isn't it a DRI, it just doesn't fit. Bottom line. The garage was there before, it was a kitchen before, we just changed the configuration, moving the stove and things like that. Everything has been signed off, the Board of Health, Gas inspector, electrical inspector, Fire Marshall's offices, the Fire Chief, that is all that there is. I hope I have been clear but if you have any question I would be glad to answer them.

Mr. Young stated that he thinks the mistake was made in 1986. I think it was a DRI in 1986. The definition of floor area in the checklist includes enclosed floor area of all floors. It doesn't say it has to have access. It doesn't say it has to have plywood on it. It doesn't say it has to be usable or have a specific use cited in the building permit. You can't build a 15,000 square foot building say that only

500 sq. ft. is going to be used therefore it is not a DRI. This was a DRI in 1986 and I think that regardless of the status of it in court and regardless of the status of it in the Town or how long it has been going on or so forth, I think we should review this. I don't care if there is access to the 2nd floor, it is a 2nd floor. When it was built the square footage should have been included. In my view this is a DRI. It was a DRI in 1986 and we should review it now.

Ms. Eber stated she is confused about the parking issue. Could we have an explanation on that. Ms. Haigazian responded that this was divided up. As an Inn this was a specially permitted use under the Zoning By-Law in the Town of Oak Bluffs. As a restaurant this was a permitted use back in 1978 when the original special permit was issued to make the Ship's Inn what it was then, an Inn with a restaurant. In 1981 they went to open the restaurant to the public and the ZBA permitted it. At that time, under the special permit that was issued to allow a restaurant, the restaurant was permitted but the Inn was specially permitted, there were 4 parking places in place. But the decision of ZBA as written just refers to the parking, it does not say how many spaces, just the parking. After that time the Town changed the parking configuration on Kennebuck Avenue, which is the main street running in front of the Ship's Inn, in such a fashion that one of the parking spaces became unusable, you couldn't get in or out. As a result of that the parking was diminished to 3 parking spaces. This addition was built into that parking place that you couldn't get in or out of because of the parking on Kennebuck Ave. The Zoning By-law thereafter changed to allow not only restaurants but Inns in that area as a permitted use. There was no special permit needed. At the time of the change of the zoning by-law there were 3 parking places at the Ship's Inn. The question was brought up by Town Counsel and referred to the ZBA and there is correspondence and memos on it to the ZBA from Town Counsel as to whether or not because it originally came by special permit the Ship's Inn needed to comply with the present parking by-law which changed after that. The parking by-law changed in 1988. Which required 1 space for every room plus spaces for the seats which would require them to have 22 parking spaces which is physically impossible unless we started stacking cars on top of each other. We went to the ZBA with a letter from the Town Counsel advising the ZBA that this was a hardship situation, that we recommended that they unilaterally amend to clarify their original finding back in 1981 to say the number of parking places. In an effort to compromise what we recommended was that it say 4 parking spaces and permit one to be off premises and to that end the Debettencourts leased a parking space across the street. Which is something that the Oak Bluffs ZBA has permitted in the past as long as it is in reasonable proximity. We went in with that. When we went before the ZBA and presented it to 3 members. At that meeting the 3 members voted unanimously to accept the proposal. We left thinking everything was over. The next day I got a call from the clerk of the ZBA telling me that there was going to be another meeting in 2 weeks. I went to the next meeting with the Debettencourt and 2 of the 3 members had changed their votes and they determined that they were not prepared to address it until all other issues had been addressed. When we asked what other issues they meant by that they brought up the issue of whether or not we needed a common victualler license

which under State law we don't need because we have an inn keepers license. They brought up another issue which I thought had been put to rest which was whether or not the original application was for storage and a number of other issues and refused to address the issue of parking alone on the basis that the Board of Selectmen had other issues. That is why.

Ms. Bryant stated that she thought she heard Ms. Haigazian say that they followed the rules and regulations of the MVC as they were and that they complied all along. My assumption is that our rules and regulations have to comply with State Code. I heard it said that there wasn't handicap access and that handicap access wasn't required. Ms. Haigazian stated I didn't say there wasn't Mr. Mavro said that. This is a groundfloor restaurant. It is handicap accessible. The 2nd floor isn't. It is not even accessible to anyone, handicap or not. Ms. Bryant asked if the Architectural Access Board has signed off as well as the Fire Department and other? Ms. Haigazian said I don't believe so but we would be happy to have them address it. It is groundfloor. Ms. Bryant said but it is handicap accessible and should be reviewed by the Architectural Access Board.

Ms. Sibley asked if we are being asked to make a decision on this tonight? Mr. Filley responded we are trying to get information tonight. Whether or not the Commissioners feel they have enough information to make a decision tonight is up to the discretion of the Commissioners. If we need to have more information the Commissioners can request it.

Mr. Sullivan asked why is there a door to the 2nd floor? Ms. Haigazian responded if they were going to use it someday it makes more sense to frame it and put in a door than it does to put in windows. The plan had been to use it for storage, Christmas decorations and stuff like that. It is better to climb up a ladder and open a door then to crawl in window from a practical standpoint.

Mr. Young stated at one point in the presentation you said that if they were going to put in flooring on the 3rd floor then it would all of a sudden be a DRI so they decided not to? Ms. Haigazian stated they were going to raise the roof and put in another story. There is no height restriction in Oak Bluffs? Mr. Young then asked so if they were going to put another story on why would that make it a DRI? Ms. Haigazian responded because then they were going to put access to the 2nd floor, a staircase. That would have counted the 2nd floor because it would have changed the whole configuration. Mr. Young stated that what you are saying is that square footage according to the DRI checklist is defined by access? Ms. Haigazian stated at that point, if they were going to use it yes. Mr. Young stated he doesn't see that in the checklist. Mr. Young stated that the other thing I wanted to point out is that storage is no specifically excluded prior to January of 1989 it says enclosed floor area. Ms. Haigazian stated you are correct. Mr. Young stated I don't see how there can be too much question about that.

Ms. Green asked if there is access to the 3rd floor? Ms. Haigazian responded no. It is a peaked roof attic.

Mr. Mavro, OBBI, stated as far as the handicap access and the Architectural Access Board it does not meet code by any stretch of the imagination, no way. Everything about it practically is wrong as far as they are concerned; the floor is brick laid in dirt, there is a step, it is more than a 1/2 inch threshold, proper rails, pitch of the ramp, width, width between the tables. It clearly doesn't meet any kind of handicap regulations. There is a height requirement in the business district in the Town of Oak Bluffs which was done shortly after this permit was taken out. I have a letter that perhaps you could read which was written by the then building inspector in 1987 to a concerned abutter. He submitted that letter.

Ms. Haigazian stated if I may, that letter doesn't address the building permits. Look at the numbers they don't match. That has been thrown up at me too many times.

Mr. Filley reviewed the letter, the permit numbers and the map and parcel numbers. Mr. Filley read the letter as follows: DATED: May 29, 1987, TO: Buster Giordano, Kennebec Avenue, Oak Bluffs, Mass., 02557. RE: Building Permit #2812, Storage, Ship's Inn. Please be advised that the above referenced permit is issued with the following stipulation; the area on Map 9, Lot 123 which was used for parking will remain open as parking area. Otherwise the Martha's Vineyard Commission will have to rule on it because the building would then be in excess of the allowable square footage. If you have any questions please feel free to contact this office. Sincerely Alishan Haigazian, Building/Zoning Official.

Mr. Filley stated that there seem to be a lot of questions here and I don't know if they can be answered before we make a decision. I understand the situation of the owners of the Ship's Inn, however I think it is important for the Commission to make a decision based on well based facts.

Ms. Haigazian offered to take MVC staff or Commissioners through the building at any time.

Mr. Lee suggested that the staff do a video of a walk through the building.

Mr. Sullivan asked if it would make any sense to have MVC counsel look at this. It seems to be a legal maze at this point. It might help sort out some of the points.

Mr. Wey offered to have the Oak Bluffs Town Counsel give a synopsis of the whole situation, and update everything.

Commissioners agreed to the Staff video and the Oak Bluffs Town Counsel synopsis.

Mr. Young stated I do understand that the applicant is undergoing a great deal of hardship and I wonder if it is possible for us to allow the building inspector to allow them to open the restaurant for the month of August until we can make a determination. From my point of view the question of ruling is all the space that is over the restaurant. If all that was there was just the restaurant it wouldn't be a DRI and that is what he wants to open. What he is being held up on is all the other space which is there by no fault of his own because I think he got an incorrect ruling back in 1986. Can we go ahead and allow this. There was discussion regarding the fact that there is no access or flooring on the 2nd floor. Mr. Young stated that doesn't make it right in my mind. Mr. Jason stated if you don't have any floor how can you have sq. footage? Mr. Young asked what permit is required for him to lay the floor back down again? I would like to let him open the restaurant for the month of August but also go ahead with our determination of whether or not this is a DRI.

Ms. Bryant asked I don't know whether or not that can be done but I certainly want to make sure there is handicap access to the restaurant.

Mr. Filley asked the Commissioners if allowing the restaurant to open is agreeable to the Commission as a whole?

Ms. Sibley stated it is agreeable to me in principal but I'm not sure if it makes any sense legally. The Commission's only power lies with our reviewing it before the permit is issued. Once the permit is issued I don't see that we have any powers at all. It is a very sticky situation and I think we may compound it by saying go ahead and issue the permit. Unfortunately the best we are going to end up with is an important clarification of our DRI checklist. I have questions about the arguments about storage. I am sympathetic with Mr. Young's position that there is not a lot being gained other than our legal position by not allowing them to open but we can't close them after we allow them to open.

Mr. Wey stated that the only question I have is that if we let them operate then how do you close them down again?

Mr. Filley asked the Executive Director if the staff can address the questions and have answers for us next week? Mr. Schilling responded yes. It was asked if Town Counsel could have the information to us by then? Mr. Wey responded yes. I will call him tomorrow. I hope it can be reviewed by the LUPC on Monday and then be ready for the full Commission for next week's meeting.

Mr. Sullivan asked if you can asked Town Counsel to specifically look at the ramifications of allowing them to open for this season? Mr. Wey responded yes.

Ms. Haigazian stated I don't want to site legaleaze but they are losing money and they have done everything the Town has wanted, every board has been addressed, every question answered. These people are here, they are not going anywhere.

Mr. Filley stated we understand the request but this is a determination the Commission has to make.

It was motioned and seconded to table the discussion for one week in which time we will have a staff video and answers from Town Counsel. No discussion is allowed on motions to table. This motion passed with 1 opposition, Jason.

ITEM #5 - Discussion - Tisbury Planning board and Board of Selectmen regarding the nomination of the District of Critical Planning Concern.

Mr. Filley apologized for not getting to this item earlier and stated he won't read the whole nomination. All of you have a copy of the letter as well as the nomination papers.

Ms. Sibley asked a procedural question. Is this literally just for discussion or is there going to be a vote on the nomination?

Mr. Filley stated that 2 nominations have been received. There will be no vote tonight. I would like to have the Planning Board, Board of Selectmen or any of their designees to make a brief presentation on their nomination including any information they would like which might help the Commissions to understand this. This is a discussion session. We will be discussing and asking questions to get an understanding of the nomination. After the Planning Board and Selectmen's presentation Commissioners can ask questions. Then we will have a staff presentation from Tom Simmons and again Commissioners can ask questions. Following there will be general discussion. There will be a DCPC committee formed to review this nomination as well as the other nomination by citizens' petition. Again this is just an information session. Mr. Filley asked Mr. Barwick, Chairman of the Tisbury Planning Board, if he would like to begin.

Mr. Barwick stated unfortunately I didn't come with a prepared statement because all of the information compiled over the past few weeks was submitted to the Commission along with our maps and scope of our designation. The only thing I could suggest to you Mr. Chairman is that you read the document that was generated out of the Planning Board office to give the members a feel for the scope of this DCPC designation. To be honest I came to hear what you people had to say about the nomination. So if you could read that document I think that will give the Commission an idea of the project.

Mr. Filley stated that the letter is in the Commissioners' packets. He then read this letter from the Tisbury Planning Board dated July 23, 1990. (This letter is available in its entirety in the DCPC and Meeting file.)

Mr. Dunham, Tisbury Board of Selectmen, stated that the Selectmen voted to endorse the proposal as put forth by the Planning Board.

Mr. Briggs, Chairman of the Tisbury Board of Selectmen, stated he would like to say that we were unanimous in endorsing this proposal as put forth by the Planning Board but it was not a majority opinion that this was the best way to approach it. Mr. Dunham and Ms. Medeiros thought that this was a reasonable approach. Myself, I thought that it would behove the Island and Tisbury in particular to first address the originally discussed area between the West Tisbury town line and the Oak Bluffs town line as the most critical area of this District of Critical Planning Concern because as everybody knows each car that ever comes on this Island goes through there twice, at least, and probably many, many more times. Any other study, or regional studies, that would come out of the MVC would come about because this study points the way to a further and enlarged study. So it was my position and it is still my position and my strong belief that if the MVC is to fulfill its role as a regional planning authority that this is where they should start and that there should not be further, they should not continue (?) their energies by trying to broaden its scope of study to include the entire Island at this time. But later maybe specific areas can be included or dealt with in particular and specific studies. So while Mr. Dunham explained that the Tisbury Board of Selectmen was unanimous it was with some reservations.

Mr. Dunham stated there was a motion made before the Board to nominate from the Oak Bluffs town line to the West Tisbury town line. The motion was made by Mr. Briggs. There was no second to the motion. The motion was lost. The next motion was to accept the Planning Board's, and endorse the Planning Board's concept. That motion was seconded and was passed with a three to zero vote.

Mr. Filley called for any other Town Board to make any comments. There were none. He then called for questions from the Commissioners.

Mr. Geller, Commissioner, asked if there was any cost estimates of the proposal made by the Commission and the counter proposal made by the Planning Board? Mr. Filley stated that Mr. Simmons will address this in his presentation.

Mr. Jason asked the Tisbury Planning Board and the Board of Selectmen why they feel that the present rules and regulations under the Island Road District are not adequate? Mr. Briggs stated that in the last 10 years there has not been adequate planning in that area. The traffic is getting worse, the shoulders of the road are worse, there is danger to cyclists and mopeds. The State Department of Public Works (DPW) considers this a failed roadway. There is a public danger. The rules and regulations are clearly not working. There is a need to improve and amend them. Mr. Jason restated his question. What is presented by the Planning Board asks for another overlay district on the Island Road District. Except for the commercial districts these roads are already in the Island Road District with regulations in place. Why are they nominating an overlay district to the Island Road District? Mr. Dunham responded that we are concerned with this stretch of road and we think, the Planning Board thinks, that other things contribute to the failure of this stretch of road and we can't address these unless you consider what feeds into this road from other roads. If you don't need to freeze what feeds it then what is the sense of



freezing what happens on this road.

Ms. Sibley stated that that is a good point but I think that there is a slight slippage, something that is going past here about the DCPC process. What you people are saying is absolutely true. The causes of the traffic exist outside of that area, residential development all over the Island. You can't freeze that. You can't stop that by declaring a DCPC along the road district. Even if you did do that you would only be declaring a moratorium on 100 or 200 ft on either side of the road and that wouldn't stop residential development, it wouldn't stop the Steamship Authority from bringing more cars. The point Mr. Jason is trying to make is that a DCPC does already exist on virtually all the roads mentioned in this nomination. The only sections of the Island roads that were excluded were the commercial districts. The Commission cannot designate a DCPC unless it has in mind some regulations that might come out of this. The regulations that reasonably might come out of a DCPC on a rural/residential stretch of road are already in place. So what I think the Planning Board is really thinking if they pursued their thought further is that we should declare a moratorium on all building, period. Because it is contributing traffic. Or declare a moratorium on the Steamship Authority bringing more cars to the Island. Those are extremely radical proposals. I don't think that is what they are saying technically. I know that is not what this DCPC would accomplish. There have to be regulations in mind to declare a stretch of road a DCPC. If they are saying study all of this in connection with a DCPC that is quite a different issue. Any proper study of the State Road corridor and its traffic problems has to address the sources of traffic. I couldn't agree more emphatically. I am just saying that to declare a DCPC on a rural stretch of road in Gay Head is not necessary in order to study the effects of that section of road in Tisbury. Whereas it is necessary to declare a DCPC on that stretch of road in Tisbury to analyze how it contributes to its own failure and it does contribute to its own failure through curb cut activity. That is where you would be looking to develop regulations during the moratorium period. Regulations for development along there so that development along there doesn't make impossible the passage of cars that must occur along that road.

Peter Cronig asked why is the section from Nobnocket up to the West Tisbury town line being considered because that is residential? Ms. Sibley stated we were suggesting the commercial district and that the study cover from the town line to the town line. Mr. Cronig then asked what about the area from the cemetery to the proposed Edgartown National Bank site? Mr. Jason stated that all we ever tried to do is put the business district into the Road Side District, simply put. Mr. Filley asked Mr. Simmons to explain the nomination.

Mr. Simmons stated he would try to limit this presentation to the maps and technical information that I have done to give you Commissioners an idea of the technical problems and things that were raised in the 2 nominations that we have received. He showed the map of the area nominated by the Planning Board and stated that the area in yellow is what is shown on their map and the red is what was listed in the text. There are some discrepancies between the two. Just the road was

nominated not an area on each side of the road. He then showed a map of the Island Road District and briefly reviewed the regulations. What this nomination does bring out is that the road study is dependent on what happens up-Island. The traffic engineer suggested that it would be necessary to do a full build out analysis of the Island. We have build out maps and it is possible to do this. The second nomination received today is a citizens' petition with 110 citizens on the petition who have been certified. This includes State Road, Beach Road, Lambert's Cove Road and portions of the Edgartown Road. Portions are already in the Island Road District. Since this is an amendment to the existing Island Road District it would contain the same 200 ft. on either side of the nominated roads. He pointed out the map which list the areas where we have traffic counts from 1986-1988. There are no 1989 counts. There is a color coding depicting the places where the counts were high. I estimate that it would take me 2 weeks, working alone and full time, to gather all the additional counts for that section of road in the Business District. As to the cost, I asked McDonough & Scully, MVC traffic engineers, to give me an estimate. His original estimate was \$15-25,000 but it might be lower since we already have some of the information. Concerning the cost of the entire Planning Board nomination it would depend on the scope of the study. The build out projection for the entire Island is anticipated in the original estimates. If we needed counts on that whole area we would need a new estimate.

Mr. Sullivan asked, so you could fill in the data gaps with count information? Mr. Simmons stated we will borrow six traffic counters but the turning counts have to be done manually, i.e. standing at the corner with a clicker to count the number of cars that turn. I estimate it would take me 2 weeks full time. My concerns now is that we might lose the counts for 1990. Mr. Sullivan motioned that we use any methods necessary to get the information to fill in the data gaps. Mr. Filley asked that he hold this motion until new business.

Ms. Colebrook asked if we could change the area nominated during our vote to consider? The response was yes.

Mr. Filley appointed the DCPC Committee as follows: Ms. Green, Mr. Sullivan, Mr. Lee, Mr. Schweikert, Ms. Sibley, Mr. Morgan and myself. Mr. Lee will act as chairman pro-temp. Mr. Filley stated that this list was developed by reviewing who has recently served on a committee so we attempted to relieve some Commissioners who have recently served on other committees.

Ms. Bryant stated that Mr. Ewing of the Regional Transit Authority could be helpful in this endeavor. It was stated that staff has already been in contact with him and will continue to do so.

Mr. Schilling stated that we have arranged to borrow 6 counters from Wellesley but we have to arrange to have somebody go over to Woods Hole to pick them up.

Mr. George, audience member, offered to go over and pick them up.

Mr. Sullivan stated that I would think the Steamship Authority would be willing to cooperate. We should contact them and see if they can be brought over without having to take a vehicle over to pick them up. Mr. Schilling stated he would make that request.

Mr. Morgan stated he has been calculating the costs of the study on the entire area nominated by the Planning Board basing his estimates on the costs of previously submitted traffic studies. He estimated the cost to be \$ 1,600,092.00.

Mr. Filley asked if any town boards have any closing comments.

Mr. Barwick thanked the Commissioners for their consideration of the Planning Board's nomination.

Mr. Briggs stated that the study has great and long lasting importance for the Island and the MVC to regulate development. I think it will effect us for at least the next 40 years. He thanked the Commissioners.

Mr. Filley then moved to the next item of business.

ITEM #6 - New Business

It was motioned and seconded that we use any methods necessary to get the information to fill in the data gaps. This motion was approved unanimously.

ITEM #7 - Correspondence

Mr. Filley read a letter dated July 24 from Mr. Aylmer offering the Mass. Maritime Academy as the site for the Marine Transit Symposium; a letter dated July 24, 1990 from the Edgartown Planning Board stating that the Board would be glad to work with the Commission and other town boards regarding changes to the DRI checklist; and a letter dated August 2nd from Commissioner Albert Fischer stating that he will not be seeking re-election to the Commission.

Commissioners expressed that they would miss Mr. Fischer.

Commissioners Colebrook and Eber stated that they would not be running either.

ITEM #6 - New Business

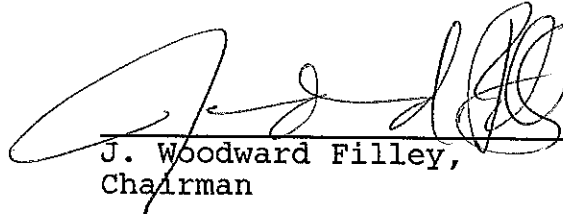
Mr. Filley returned to new business and stated that a representative from the University of Massachusetts will be here on August 15th to discuss the Geographical Information System (GIS) and he invited all Commissioners, town boards and interested parties to attend.

Mr. Lee, Chairman Pro-Temp of the newly formed DCPC Committee, scheduled the first meeting for Thursday, August 9th at 7:30 p.m. He stated that he also suggests that Mr. Sullivan be appointed the chairman as the Tisbury representative to this Committee. It was stated that as acting Chairman Mr. Lee could make that appointment at

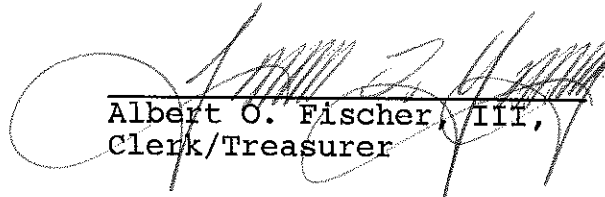
the first Committee meeting.

The meeting was adjourned at 10:08 p.m.

ATTEST

  
J. Woodward Filley,  
Chairman

8/19/90  
Date

  
Albert O. Fischer, III,  
Clerk/Treasurer

8/10/90  
Date

Attendance

Present: Bryant, Colebrook, Eber, Filley, Fischer, Green, Jason, Lee, Morgan, Schweikert, Sibley, Sullivan, Wey, Young, Geller.

Absent: Early, Durawa, Benoit, Allen, Harney, Davis.